DASUKI BIN MATHURI

v.

TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & 2 ORS.

HIGH COURT MALAYA, MELAKA
TUAN SURIYADI BIN HALIM OMAR JC
[CRIMINAL APPLICATION NO. 44-3-1995]
20 JULY 1995

PREVENTIVE DETENTION: *Habeas corpus - Detention under s. 8(1) Internal Security Act 1960 - Legality - Detainee handed only one copy of Borang I - Whether a serious procedural breach - Whether afforded sufficient justification for release of detainee - Provision of r. 3 Internal Security (Advisory Board Procedure) Rules 1972 - Whether mandatory - Whether to be construed strictly.*

The applicant was ordered to be detained for two years following a detention order issued by the Minister of Home Affairs under s. 8(1) Internal Security Act 1960. In this application for *habeas corpus* the applicant contended that his said detention was tainted with serious procedural defect such as to render the detention unlawful. The facts showed that after his said detention, the applicant was given only one copy of Borang I instead of the minimum two copies as required by r. 3 Internal Security (Advisory Board Procedure) Rules 1972. Before the learned Judicial Commissioner the issue that arose was whether the said r. 3 was mandatory in nature, and if so, whether its breach would render the detention unlawful.

Held:
The requirement of r. 3(1)(b) Internal Security (Advisory Board Procedure) Rules 1972 that the detainee should be given two copies of Borang I, and three copies if he intended to engage a Counsel, is mandatory in nature and should be strictly construed. The detaining authority was in breach of a mandatory requirement when it gave the applicant only one copy of Borang I. It follows therefore that the continued detention of the detainee herein was unlawful.

Cases referred to:
Puvaneswaran v. Menteri Hal Ehwal Dalam Negeri, Malaysia [1991] 3 MLJ 28 ***(refd)***
Aw Ngoh Leang v. Inspector General of Police & Ors. [1993] 1 MLJ 65 ***(refd)***
Lee Weng Kin v. Menteri Hal Ehwal Dalam Negeri Malaysia [1991] 2 MLJ 472 ***(refd)***

Legislation referred to:
Emergency Public Order and Prevention of Crime Ordinance 1969
Federal Constitution, Art. 43(A)
Internal Security Act 1960 (Act 82), ss. 8(1), 73(3)(c)
Internal Security (Advisory Board Procedure) Rules 1972, s. 3(1)(b)
Public Order and Prevention of Crime (Procedure) Rules 1972, r. 3(2)
Restricted Residence Enactment 1933

For the appellant - S. Pathmanathan; M/s. Kumar, Sitham & Co.
For the respondent - Mohd Abazafree b. Mohd Abbas, Federal Counsel

JUDGMENT

Suriyadi bin Halim Omar JC:

Dasuki bin Mathuri the detainee in the current case was the subject of a detention order by the Minister of Home Affairs acting pursuant to the powers provided by s. 8(1) of the Internal

Security Act 1960 (Act 82). The Minister affirmed that he received a report as regards the detention of Dasuki under s. 73(3)(c) of the Internal Security Act and was satisfied that the activities of this man endangered and affected the security of Malaysia. Being satisfied that it was necessary to prevent him from acting in any manner that could jeopardize the security of Malaysia made an order that he be detained for a period of two years with effect from 16 November 1994. Exhibit MJMA1 is the order signed by the Minister of Home Affairs as provided by Article 43A of the Federal Constitution.

At the outset of his application for *habeas corpus* the applicant objected to the detention on three grounds namely that he was not informed of his rights of representations, the reasons and charges were groundless and lastly that there was a breach of certain procedural requirements. During the hearing Counsel for the detainee emphasised on that procedural defect which entitled him to be released. It would appear as per enclosure (2) in particular paragraph 15 which referred to exhibit S.1 the detainee was only handed one copy of Borang I. Exhibit S.1 at page 2 clarifies the complaint which reads:

> Kami K/Insp Jono b. Hj Sayuti (I/6853) Dan K/Insp Mathew Jacob (I/11515) memperakui bahawa kami pada 16 November 1994 jam 4.30 petang telah:
>
> (a) ...
>
> (b) ...
>
> (c) menyampaikan satu salinan Borang I untuk membolehkannya mengemukakan rayuan terhadap Perintah Tahanan kepada Pengerusi Lembaga Penasihat yang ditubuhkan di bawah Perkara 151 Perlembagaan Persekutuan.

To have a better understanding of this procedural breach I reproduce the Internal Security (Advisory Board Procedure) Rules 1972 which reads:

> 3. Procedure for making representations.
>
> (1) When any person to whom a detention order relates is served with the detention order the police officer serving the detention order shall at the same time:
>
> (a) ...
>
> (b) provide him with two copies (or if the person states that he intends to engage an advocate to represent him, three copies) of Form I in the Schedule and obtain from him one copy of Form I signed by him by way of acknowledgement of the receipt thereof; and
>
> (c) ...

Thankfully much judicial time was saved when the Federal Counsel conceded that only one copy was handed over to the detainee. Unfortunately his justification for the shortfall of the number of copies was unconvincing at the least. He asserted that the other copy had it been handed would have been retrieved from the detainee as it was an acknowledgement of the receipt of that relevant singular copy. In this case he submitted that the acknowledgement as signed by the detainee at the reverse page of that solitary copy substituted and justified the shortfall.

I find this argument on behalf of the Minister of Home Affairs very much to be desired as to accept his interpretation of relevant provisions pertaining to matters of preventive detention seemed to detract from the current judicial opinion of the Courts. I take this opportunity to pluck out certain essential remarks in the case of *Puvaneswaran v. Menteri Hal Ehwal Dalam Negeri Malaysia* [1991] 3 MLJ 28 especially at page 29 paragraph I right hand which reads:

> There had been a consistent current of judicial opinion in our Courts, including the latest decisions of the Supreme Court, which indicate that when confronted with the problem of interpreting powers of preventive detention, they have interpreted them strictly so as to require that the provisions of the relevant statute are rigidly and meticulously complied with.

In this case the applicant was detained under the Emergency (Public Order and Prevention of Crime) Ordinance 1969. The police officer attached to the Anti Secret Societies Department merely served upon the detainee one copy of Form I within the meaning of r. 3(2) of the Public Order and Prevention of Crime (Procedure) Rules 1972. The learned Counsel for Puvaneswaran pointed out to the Court that there was a non compliance of r. 3(2) of the said Public Order and Prevention of Crime (Procedure) Rules 1972 which imposed a duty on the officer in charge when informing any detained person of his right to make representations, to provide with two copies (or if the detained person has stated that he intended to engage an advocate to represent him, three copies) of Form I. His Lordship Edgar Joseph J (as he then was) at page 31(B) right hand column said:

> It is manifestly clear that the requirements of r. 3 for the delivery to a detainee of the requisite number of copies of Form I wherein appear the grounds for his detention are not just a concession but *a right designed to enable and not just to assist* him in making representations to the Advisory Board which has the power to recommend his release to the Yang di Pertuan Agong. If he does not intend to engage Counsel then he *shall be* provided with *two* copies of Form I
>
> ...
>
> It follows, therefore, that there has been a serious breach of the mandatory requirements of r. 3(2) the effect of which is to render the detainee's continued detention unlawful.

The above provision came into prominence again when the appellant as reported in the case of *Aw Ngoh Leang v. Inspector General of Police & Ors.* [1993] 1 MLJ 65 objected to the legality of his detention. He decried that only one copy of the prescribed Form for making representations against his detention was given to him which was contrary to r. 3 of the Public Order and Prevention of Crime (Procedure) Rules 1972. Justice L.C. Vohrah J on behalf of the Supreme Court emphatically said at page 68 para F-G:

> We are of the view that the above observations of the learned Judge reflect the correct interpretation of the mandatory nature of the relevant provisions as they concern the right of a person detained without trial to seek his own release by a procedure for the making of representations requiring the filling-up of a minimum of two forms and of one more if the detainee intends to be represented before the Advisory Board. Any disobedience of the mandatory requirements for the protection of this right would vitiate any order of detention made even if no real prejudice has ensued to the detainee. The maxim *de minimis con curat lex* can have no application in such a case as a breach of a mandatory requirement can never be a trifling matter when it involves the civil liberty of an individual.

After scrutinising r. 3 of the Public Order and Prevention of Crime (Procedure) Rules 1972 and s. 3(1)(b) of the Internal Security (Advisory Board Procedure) Rules, 1972 and after having taken into consideration the law of preventive detention generally the abundance of authorities would expect the Court to construe strictly the above latter provision. Should there be any doubt the Court, leans in favour of the detainee. Treading carefully I had to decide whether the requirements of this relevant provision were mandatory or directory. I opted for the former approach without any hesitation. I take solace in the remarks of Justice Wan Yahya J (as he then was) when delivering the judgment of the Supreme Court in the case of *Lee Weng Kin v. Menteri Hal Ehwal Dalam Negeri, Malaysia* [1991] 2 MLJ 472 at page 474 paragraph C right when he said:

The law on preventive detention under the Internal Security Act 1960, as in the Restricted Residence Enactment 1933, involves the deprivation or serious curtailment of a citizen's personal liberty and as such it must be subjected to strict judicial interpretation. A citizen whose personal liberty is about to be deprived or seriously restricted has the right to be notified, in the most authentic manner, the order which has been made against him.

Having taken into consideration the relevant factors I ordered the release of the applicant and declared the detention null and void.